

National Association of Letter Carriers, Local Branch 233¹ (United States Postal Service) and Mark Boatwright. Case 11-CB-2124-P

May 28, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On November 17, 1992, Administrative Law Judge William N. Cates issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions as modified and to adopt the recommended Order as modified.

The Respondent has excepted, *inter alia*, to the judge's finding that it established and maintained a policy of not equally representing nonmembers. The Respondent has also excepted to the judge's recommended remedy for the unlawful failure to file Mark Boatwright's grievance concerning third quarter 1991 overtime equalization insofar as the remedy is an unconditional make-whole order, without regard to the Employer's willingness to process the grievance according to the contractual grievance/arbitration procedure and without regard to the merits of the grievance. We find merit to the Respondent's exceptions in these respects for the reasons set forth below.

1. The judge found that the various violations of Section 8(b)(1)(A) found in this proceeding demonstrate that the Respondent communicated to employees that it would not represent nonmembers because they did not pay their share of the costs of such representation. After reviewing the evidence of the Respondent's recent representational efforts on behalf of nonmembers, the judge concluded that, notwithstanding that evidence, the Respondent unlawfully established and maintained a policy that nonmembers would not be represented equally. Our analysis of the evidence leads us to the opposite conclusion.

Initially, we wish to make clear a distinction between the finding we are reversing and certain violation findings which remain undisturbed. We agree that various statements by agents of the Respondent concerning its unwillingness to represent nonmembers amount to threats that violate Section 8(b)(1)(A) of the Act, and we leave intact those portions of the Order that enjoin the Respondent and its agents from uttering such threats of unequal representation. We disagree,

however, that the Respondent actually carried through on those threats by maintaining in practice a policy of unequal representation.

To be sure, the judge was justified in concluding that the 8(b)(1)(A) violations found in this proceeding establish a *prima facie* case that the Respondent established and maintained an unlawful policy against representing nonmembers equally. We find, however, that the Respondent has rebutted that *prima facie* case by providing uncontroverted evidence of numerous instances of its representing nonmembers. In so finding, we note particularly that nonmember Mark Boatwright's third quarter 1991 overtime grievance is the only example in the record of the Respondent's failure to represent a nonmember. All of the other violations found herein involve statements of unwillingness to act on behalf of nonmembers, but the record contains no other evidence of the Respondent actually failing or refusing to represent a nonmember. We also note that the record does not show that the representation the nonmembers were afforded was in any way different from the representation provided to members.

The record is replete with evidence of the Respondent's representing nonmembers under a variety of circumstances. Specifically, Job Steward Vonda Fezio, who unlawfully failed to file Boatwright's grievance concerning third quarter overtime equalization, nonetheless filed a grievance in October 1991 concerning overtime on behalf of nonmember Boatwright (and member Johnny Moore), as well as pursued a complaint about overtime in December 1991 through the Union Management Pairs System (UMPS) on Boatwright's behalf. She also filed a grievance concerning a disciplinary warning on behalf of nonmember Greg Scharstein during 1991. Additionally, Job Steward Ken Lindler filed a grievance in late 1991 on behalf of nonmember Terry Gripper and assisted nonmember Scharstein with a grievance in early 1992. Further, Branch President Kenny Price assisted nonmembers Robert Turgeon, Gerald Caddy, and Ward Lang with matters concerning a disciplinary warning, a removal action, and backpay, respectively. The Respondent has also represented nonmembers together with members in "class action" grievances, including the grievance regarding fourth quarter 1991 overtime in which the Respondent is seeking \$91.50 for Boatwright.

In light of this evidence, we conclude that the record considered as a whole does not support the judge's finding that the Respondent established and maintained a policy against representing nonmembers equally. Accordingly, we shall dismiss this allegation of the complaint.

2. With respect to the remedy for the Respondent's unlawful failure to file Boatwright's grievance, we agree with the judge that the analysis set forth in *Rub-*

¹ The Respondent's name has been corrected to conform with the record.

ber Workers Local 250 (Mack-Wayne), 290 NLRB 817 (1988) (*Mack-Wayne II*), is applicable here. In that regard, we also agree with the judge that the General Counsel met his burden of showing that Boatwright's grievance was not clearly frivolous. We do not agree with the judge, however, that the Respondent need not attempt to process the grievance with the Employer. Nor do we agree that the Respondent has forfeited its right to litigate the merits of Boatwright's grievance at the compliance stage of this proceeding.

In *Mack-Wayne II*, the Board described, in the following terms, its policy of fashioning appropriate remedies for a union's unlawful failure to file a grievance:

[I]n addition to our usual cease-and-desist order and notice posting requirement, we have required the offending union to request the employer . . . to consider the grievance on the merits, to take the grievance to arbitration . . . and (if necessary) to file a Section 301 action to compel arbitration. We have also required the union to permit the affected employee to be represented by counsel of his or her own choice at any grievance proceeding and to reimburse the employee the reasonable fees of counsel. [Footnotes omitted.]

These remedial provisions share a common objective. They are all designed to restore the parties to their preunfair labor practice posture to the maximum extent possible. They are intended to hold the union to the terms of the collective-bargaining agreement that it negotiated with the employer and to permit the employee to have his or her grievance resolved on its merits pursuant to the negotiated grievance procedure. In cases, however, where the employer is not before the Board as a party and resolution of the grievance pursuant to the agreed-on procedure becomes impossible, then we have concluded that the union must make the employee whole or the employee will be left without an adequate remedy for the union's unlawful refusal to process the grievance.

Mack-Wayne II, supra at 818.

Although Boatwright's efforts to process the grievance on his own behalf were rejected by the Employer as untimely, we cannot conclude, as the judge did, that the Employer would definitely consider such an effort by the Respondent to be untimely as well. The Employer may choose, for reasons of its own, to waive the time limits for the Respondent. Accordingly, we shall amend the remedy to require the Respondent to process the grievance and to reimburse Boatwright for the reasonable fees of counsel during any grievance and arbitration proceedings that may ensue.

The Board also held in *Mack-Wayne II*, supra at 820-821, that in "all cases where a union violates Section 8(b)(1)(A) by failing to properly process an

employee's grievance," the initial burden is on the General Counsel to establish that the employee's grievance was not clearly frivolous in order to be entitled to a provisional make-whole remedy in addition to the cease-and-desist order, notice posting, and grievance processing. Once established, the burden shifts to the respondent union to establish that the grievance was not meritorious. The Board held further that "the union should be given the option of litigating the merits of the employee's grievance at either the unfair labor practice hearing or at the subsequent compliance stage."

As stated above, we agree with the judge that the General Counsel has established that Boatwright's grievance is not clearly frivolous. The burden has thus shifted to the Respondent to establish that the grievance is without merit. The judge found that the Respondent failed prior to the close of the unfair labor practice hearing to make an unambiguous election to litigate the merits of the grievance at either the unfair labor practice hearing or at the compliance stage, thus forfeiting its right to do so.

There is no doubt from the record in this case that the Respondent did not litigate the merits of the grievance at the unfair labor practice hearing; it is, therefore, clear that the Respondent elected to litigate the merits at the compliance stage. We note that the judge never asked the Respondent at any point during the hearing to choose whether to litigate the grievance's merits concurrently with the unfair labor practices or later at compliance. In *Mack-Wayne II*, supra at 821, the Board explained that a respondent union's "unambiguous election" prior to the close of the hearing was necessary because "we will not allow the union . . . to litigate this issue twice." The Board did not in *Mack-Wayne II* or any of its progeny specify the format of the unambiguous election.

Inasmuch as the Respondent clearly elected to litigate the merits of Boatwright's grievance at compliance by failing absolutely to litigate the merits at all at the unfair labor practice hearing, thus avoiding *Mack-Wayne II*'s expressed concern for litigating the merits twice, we shall order a provisional make-whole remedy for the violation of Section 8(b)(1)(A).

AMENDED CONCLUSION OF LAW

Substitute the following for Conclusion of Law 4.

"4. By threatening employees that union members would be given preferred treatment over nonmembers and by communicating a policy to employees that the Union did not have to represent nonmembers, the Union has restrained and coerced employees in the exercise of rights guaranteed by Section 7 of the Act, thereby violating Section 8(b)(1)(A) of the Act."

AMENDED REMEDY

Having found that the Respondent engaged in unfair labor practices in violation of the National Labor Relations Act, we shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the purposes of the Act.

Specifically, having found that Mark Boatwright's grievance concerning overtime equalization for the third quarter 1991 was not clearly frivolous, and having found that the Respondent has elected to litigate the merits of his grievance at the compliance stage of this proceeding, we shall order the Respondent to comply with a provisional make-whole and other remedies similar to those set out in *Rubber Workers Local 250 (Mack-Wayne Closures)*, 279 NLRB 1074 (1986) (*Mack-Wayne I*). Backpay shall be computed in the manner described in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest computed according to *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, National Association of Letter Carriers, Local Branch 233, Columbia, South Carolina, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Delete paragraph 1(d) and reletter the subsequent paragraph.

2. Substitute the following for paragraph 2(a) and reletter the subsequent paragraphs accordingly.

“(a) Request the United States Postal Service to consider employee Mark Boatwright's grievance concerning overtime equalization for the third quarter 1991 and, if it refuses to do so, promptly pursue the remaining stages of the grievance procedure, including arbitration, in good faith with all due diligence.

“(b) Permit Mark Boatwright to be represented by his own counsel at the remaining stages of the grievance procedure and at the arbitration proceeding, and pay the reasonable legal fees of such counsel.

“(c) In the event that it is not possible to pursue the remaining stages of the grievance procedure, resulting in the inability to resolve the grievance of Mark Boatwright on the merits, make Mark Boatwright whole for any loss of earnings he may have suffered as a result of its unlawful conduct in failing to file his grievance, by payment to him of the amount he would have earned had overtime been equalized during the third quarter 1991, with interest.”

3. Substitute the attached notice for that of the administrative law judge.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations not found.

MEMBER OVIATT, dissenting in part.

I agree with the judge's finding that the Respondent violated Section 8(b)(1)(A) by establishing and maintaining a policy of not representing nonmembers equally with members.

The judge found, and my colleagues and I agree, that the General Counsel established a prima facie case that the Respondent maintained this discriminatory practice. In light of the evidence, this finding is more than warranted. As the judge recounted, the Respondent's officials explicitly stated to employees that the Respondent did not have to represent nonmembers.¹ As the judge further found, the Respondent, contrary to its duty of fair representation, failed to process employee Boatwright's overtime grievance because Boatwright was not a member of the Union. By its words and deed, the Respondent demonstrated its policy of failing to represent nonmembers equally.

My colleagues, contrary to the judge, find that the Respondent rebutted the General Counsel's prima facie case. I disagree. My colleagues rely on evidence showing that in certain instances the Respondent in fact represented nonmembers.² But this does not establish that the Respondent represented nonmembers equally with members.

I emphasize that the General Counsel established a prima facie case that the Respondent had a policy against representing nonmembers *equally*. And in fact the Respondent did not represent nonmember Boatwright equally. To rebut this prima facie case, it would seem beyond dispute that the Respondent had to establish that it represented nonmembers with the same regularity and initiative as it represented members. Surely, the Respondent did not do this. It merely showed that on some occasions it represented nonmembers,³ but not always, as Boatwright illustrates. The Respondent had the burden to prove that it represented unit members equally and it failed to meet

¹ Union Steward Kenny Lindler told employee Mark Boatwright that “we [the union] take care of our union members.” Lindler, on another occasion, told Boatwright that “[i]f you pay your dues, you are represented.” Union Steward Vonda Fezio told Boatwright that she had been told by the Union hierarchy “not to waste any time with non-union members and/or represent them.” Union Branch President Price, in responding to employee Jack Shelton's questions about the Employer's same day leave policy, told Shelton that “he [Price] didn't want [to] hear anything else he had to say, scab, until you've paid some union dues.”

²For argument's sake, I will assume, as my colleagues conclude, that the Respondent represented nonmembers in “numerous instances.” Nonetheless, in the absence of a showing of how many grievances were filed by nonmembers and how many of those were actively processed, I question whether this conclusion is justified.

³Hypothetically, if a union had a policy that it would represent members (i.e., by processing grievances, etc.) 100 percent of the time and represent nonmembers 90 percent of the time, that union most assuredly would be failing to represent members and nonmembers equally.

it. It totally failed to adduce evidence demonstrating that members and nonmembers were treated alike.

The judge was correct, and I would adopt his finding.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail to file any grievance on behalf of any employee because that employee is not a member of the Union.

WE WILL NOT threaten employees that union members will be given preferred treatment over nonmembers.

WE WILL NOT communicate a policy to employees that we do not have to represent nonmembers.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL request the United States Postal Service to consider employee Mark Boatwright's grievance concerning overtime equalization for the third quarter 1991 and, if it refuses to do so, WE WILL promptly pursue the remaining stages of the grievance procedure, including arbitration, in good faith with all due diligence.

WE WILL permit Mark Boatwright to be represented by his own counsel at the remaining stages of the grievance procedure and at the arbitration proceeding, and WE WILL pay the reasonable legal fees of such counsel.

WE WILL make Mark Boatwright whole, with interest, for any loss of earnings he may have suffered as a result of our failure to file his grievance concerning third quarter 1991 overtime equalization, if his grievance concerning that matter cannot be processed

through the remaining stages of the grievance procedure.

NATIONAL ASSOCIATION OF LETTER CARRIERS, LOCAL BRANCH 233

Donald R. Gattalaro, Esq., for the General Counsel.
Michele Dunham Guerra and Peter D. DeChiara, Esqs.
(*Cohen, Weiss and Simon*), of New York, New York, for the Employer.

DECISION

STATEMENT OF THE CASE

WILLIAM N. CATES, Administrative Law Judge. In this case, counsel for the General Counsel claims that National Association of Letter Carriers, Local Branch 4223 (the Union) established and maintained a policy that nonunion members would not be equally represented by the Union; communicated a policy to employees of the United States Postal Service (USPS) that it did not have to represent nonunion members; and threatened employees of USPS that union members would be given preferred treatment over nonunion members. Counsel for the General Counsel contends the above actions of the Union violates Section 8(b)(1)(A) of the National Labor Relations Act (the Act). Counsel for the General Counsel also claims that, since on or about January 1, 1992,¹ the Union has, in violation of Section 8(b)(1)(A) of the Act, failed for unfair, arbitrary, and invidious reasons to file a grievance covering overtime pay for USPS employee Mark A. Boatwright (Boatwright) because he was not a member of the Union.

I heard this case in trial in Columbia, South Carolina, on September 4, based on a complaint and notice of hearing (complaint) issued by the Regional Director for Region 11 of the National Labor Relations Board (the Board) on April 23, following his investigation of an unfair labor practice charge filed by Boatwright on March 6 and amended on April 13.

All parties were afforded full opportunity to call, examine, and cross-examine witnesses and to present relevant evidence. I listened to counsel for the General Counsel's closing argument at trial and have considered the brief filed by the Union. I carefully observed the demeanor of the witnesses as they testified. Based on the above, and more particularly on the findings and reasonings set forth below, I will find the Union violated the Act essentially as alleged in the complaint.

FINDINGS OF FACT

I. JURISDICTION

USPS provides Postal Service for the United States of America and operates facilities throughout the United States in the performance of that function, including its Dutch Fork Branch facility located at Columbia, South Carolina, the only facility involved in this proceeding. I find the Board has jurisdiction over USPS pursuant to Section 1209 of the Postal Reorganization Act.

¹ All dates hereinafter are 1992 unless I indicate otherwise.

II. LABOR ORGANIZATION STATUS

The complaint alleges, the parties admit, the evidence establishes, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. A BRIEF OVERVIEW

At all relevant times here, the National Association of Letter Carriers, AFL-CIO (NALC), a labor organization, and USPS have maintained in effect and enforced a collective-bargaining agreement (CBA) covering wages, hours, and other terms and conditions of employment covering all postal employees in the city letter carriers craft including employees employed at the Dutch Fork Branch, Columbia, South Carolina 29210 facility. The agreement between NALC and USPS contains provisions for grievance and arbitration ("Grievance-Arbitration Procedure," art. 15 CBA):

The parties' CBA states with respect to overtime assignments that: When needed, overtime work for regular full-time employees shall be scheduled among qualified employees doing similar work in the work location where the employees regularly work in accordance with the following:

A. Two weeks prior to the start of each calendar quarter, full-time regular employees desiring to work overtime during that quarter shall place their names on an "Overtime Desired" list.

B. Lists will be established by craft, section, or tour in accordance with Article 30, Local Implementation.

Additionally, under the collective-bargaining agreement at article 8, section 5(C)(2)(b), USPS is obligated to distribute equitably the opportunities for overtime to full-time letter carriers who have placed their names on the overtime desired list.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Allegations the Union Threatened Employees that Its Members Would Be Given Preferred Treatment over Nonunion Members*

It is alleged at paragraph 7(a) of the complaint that the Union, through the actions of its agent, Job Steward Kenny Lindler² (Job Steward Lindler), on or about September 17, 1991, threatened employees that union members would be given preferred treatment over nonunion members.

Boatwright said he was on the overtime desired list during third quarter (July, August, and September) 1991 but believed overtime opportunities were not being distributed equally. On September 9, 1991, Boatwright spoke with then Assistant Job Steward Lindler about overtime equalization. According to Boatwright, Lindler said USPS had until the end of fourth quarter (October, November, and December) 1991 to equalize opportunities for overtime and that Boatwright did not need to worry about it. Boatwright said he spoke with Assistant Job Steward Lindler again on September 17 about his not being assigned overtime. Boatwright said this conversation took place on the workroom floor with

other employees in the area. Boatwright testified, "I brought it to his attention that I was making . . . more undertime than I was overtime." According to Boatwright, Assistant Job Steward Lindler responded, "Well, we take care of our own Union members."³ Boatwright, who was not a member of the Union at that time,⁴ said he simply walked away from Lindler.

Assistant Job Steward Lindler acknowledged Boatwright talked with him about overtime in September 1991. Lindler said Boatwright was contending overtime was not being effectively equalized and wanted him to find out why. Lindler said he told Boatwright, USPS had until the following quarter to equalize overtime.

Lindler said he spoke with the Dutch Fork post office supervisor of letter carriers, Bob Blanding (Supervisor Blanding), about Boatwright's concerns. According to Lindler, Blanding was not aware Boatwright was on the overtime desired list for that quarter and promised to try to "equalize him" during the remaining quarter. Lindler said he reported his efforts to Boatwright and that Boatwright said it was fine with him just so long as overtime was equalized. Lindler could not recall mentioning anything to Boatwright about the Union representing its members and added he had been instructed to represent nonmembers the same as members which he did. Lindler acknowledged he had not been given any training at the time he became assistant job steward and none thereafter until "well after" he had become an assistant job steward.⁵

Boatwright impressed me as a somewhat angry witness who is convinced, and determined to establish, that the Union has been unresponsive to his concerns about overtime equalization. I am, nevertheless, persuaded he testified truthfully. Accordingly, I credit his above-outlined conversations with Assistant Job Steward Lindler.

Assistant Job Steward Lindler's statement to Boatwright that "we take care of our own union members" must be viewed in context in order to determine if under all the circumstances it would have a tendency to restrain and coerce employees within the meaning of Section 8(b)(1)(A) of the Act. Lindler made the comment to Boatwright during the second time Boatwright spoke to him about overtime. Boatwright was not a member of the Union at the time. It is implicit in Lindler's statement that nonmembers will not be taken care of by the Union. Accordingly, I find Lindler's comments violate Section 8(b)(1)(A) of the Act. I might have been inclined to view this as an isolated incident perhaps made in jest if counsel for the General Counsel had failed to establish other violations of a like nature. However, other like violations were established and preclude such a conclusion.

B. *The Allegation the Union Communicated a Policy to Employees that It Did Not Have to Represent Nonunion Members*

It is alleged at paragraph 7(b) of the complaint that in January and February, the Union, through Job Steward Vonda Fezio (Job Steward Fezio), Job Steward Lindler, and Local

²Lindler served as an assistant job steward from late summer or early fall 1991 until he became job steward at the end of January 1992.

³Boatwright acknowledged on cross-examination that Lindler made his comments in a joking manner.

⁴By the time of the trial here, Boatwright had joined the Union.

⁵It appears Lindler's first formal training was in November 1991.

Branch President Kenny Price (Branch President Price), communicated a policy to employees that the Union did not have to represent nonunion members.

1. Statements attributed to Fezio

Boatwright testified that during the first week of January, he asked Job Steward Fezio in the breakroom if she had started filing an overtime grievance for him. Fezio told Boatwright she would finish the conversation with him outside the breakroom. Boatwright testified that outside the breakroom Fezio told him that “she did not have to represent non-union members” and if he “ever asked her a question like that again in front of members, she would embarrass [him].” Boatwright said some 15 or 20 minutes later, Fezio “apologized” and told him she would file the overtime grievance he had requested.

Boatwright stated that in late January in the parking lot after Fezio had resigned as job steward, he asked her what was going on in that Branch President Price and National Business Agent Rose had been through the facility but that neither shook his or certain others hands. Boatwright said Fezio responded that Price and Rose “told her not to waste any time with non-union members and/or represent them.”

Fezio acknowledged Boatwright asked her to file a grievance related to overtime in early January. She also acknowledges she refused to investigate or initiate a grievance for him for a few minutes or perhaps even a day. Fezio testified that after she refused to file the grievance for Boatwright, she did “a lot of thinking about it” and then told him she was “going ahead” with his grievance because she hadn’t seen anything in writing and she didn’t understand exactly what the Union’s position was in situations like his. Fezio explained it was her understanding at that time “that we did not have to do the initiating . . . we didn’t have to begin a grievance for a non-member.” Fezio explained she understood Branch President Price’s policy to be that she was “not to compile . . . evidence” for nonmembers that nonmembers had to bring us “something” to show there was a possible grievance. Fezio further explained she understood the policy to be that “we were not to find things to grieve to scabs⁶ or anybody—for non-member[s].” Fezio said she had always represented any employee that had a problem but she did not “like representing non-members because they don’t pay . . . dues.”

Fezio resigned her position as job steward on January 25. In a two-page letter attached to her brief resignation note to Branch President Price, Fezio in part noted:

For months, I have practically begged the scabs in our office to join the union and give their support. Do you members realize that many, if not most of our grievances and complaints originate with scabs? I have done my best to defend everyone that asked for union representation, scab or not. I asked months ago that you put some peer pressure to scabs and let them know you won’t support their free ride. Most of you ignored my request and/or criticized it.

I credit Boatwright’s testimony as outlined above related to his conversations with Job Steward Fezio. Fezio acknowl-

⁶Fezio said, “We called them [nonmembers] scabs.”

edged she told Boatwright she did not have to represent non-union members. Fezio candidly admitted she did not like representing nonmembers because they didn’t pay dues. Even after Fezio apologized to Boatwright, and told him she would file his grievance, she never in fact did so. The tenor of her testimony was that she agreed to file Boatwright’s grievance only because she did not have written instructions from the Union regarding what action (or lack thereof) she should take when a nonmember wanted to file a grievance. In her resignation letter, Fezio bemoaned the fact she could not generate more interest among the local union membership to bring “peer pressure” against the “scabs” whom she perceived to be free riders at the expense of members. Even after Fezio resigned her job steward’s position, she still believed the policy to be that the Union would not represent nonmembers in that she told Boatwright that Branch President Price and National Business Agent Rose had “told her not to waste any time with non-union members and/or represent them.”

In light of all the above, I find, as alleged in the complaint, that the Union through Job Steward Fezio communicated a policy to employees that the Union did not have to represent nonunion members. I find Fezio’s “apology” to Boatwright did not constitute a repudiation of her earlier refusal to file a grievance on his behalf because her actions were not free from other prescribed illegal conduct and she never in fact filed the grievance Boatwright requested.

2. Statements attributed to Lindler

Boatwright testified that on January 27, he talked with Job Steward Lindler⁷ and “brought up the fact that the overtime hadn’t been straightened out.”⁸ Boatwright testified Job Steward Lindler told him, “You get what you pay for. If you pay your dues, you are represented.” Boatwright said letter carrier Jeffrey Beaudrot (Beaudrot) was present during the above exchange.

Beaudrot testified Boatwright asked Lindler if the Union was going to file the grievance covering his overtime and that Lindler responded, “no dues, no representation.”

Job Steward Lindler never specifically denied making the comments Boatwright and Beaudrot contend he made in their late January exchange. Lindler testified he had called Boatwright a “scab” on numerous occasions and they “traded insults back and forth” and he, Lindler, “was under the impression this was all picking and teasing.” Lindler testified Boatwright told him he understood they were “just teasing” and he would never use any of Lindler’s comments as a basis for any action against Lindler. Lindler said he had always been told to represent nonmembers the same as members.

I credit Boatwright’s and Beaudrot’s testimony regarding Lindler’s January 27 comments to Boatwright. I attach no significance to the fact Boatwright said he didn’t mention the word grievance whereas Beaudrot recalled Boatwright asking Lindler if he was going to file a grievance on his overtime. Both Boatwright and Beaudrot were addressing the subject matter—overtime—of the grievance Boatwright was attempt-

⁷Lindler replaced Fezio as job steward when Fezio resigned on January 25.

⁸Boatwright said he did not mention a grievance in his comments with Lindler.

ing to pursue and what is critical is Lindler's response. On that point, Beaudrot corroborates Boatwright's testimony.

I conclude Lindler's comments communicated a policy to employees that the Union did not have to represent nonunion members. Such violates Section 8(b)(1)(A) of the Act, and I so find.

3. Statements attributed to Local Branch President Price

Beaudrot testified he overheard a conversation during the last week of February between letter carrier Jack Shelton (Shelton) and Branch President Price. According to Beaudrot, Shelton asked Price why the Union had given up the same day leave policy that had been in effect at the facility. According to Beaudrot, Price told Shelton "he didn't want [to] hear anything else that he had to say, scab, until you've paid some Union dues." Shelton told Price he had paid dues longer than Price had. Beaudrot testified Price responded, "well, that was then" and the conversation ended.⁹

Branch President Price acknowledged he talked with Shelton but could not be certain of the date. Price said he was at the facility on another matter and at a time when he and Shelton were approximately 5 feet apart, Shelton "yelled" "what's the Union going to get . . . for us next? We lost our same day leave. What are you doing next?" Price said although there was a lot of noise in the area (moving equipment and a radio playing) "I told him [Shelton] he didn't negotiate the local contract and he did not have a say in it." Price said dues were not mentioned in the conversation.

Beaudrot impressed me as a straightforward witness with good recall. Price, on the other hand, acknowledged that "some" of his recall of the conversation was based on what he heard at trial and "some" on his own. I am persuaded Beaudrot's recollection is more reliable and, as such, I credit his testimony regarding the exchange between Price and Shelton.

For a branch president to tell an employee, as Price did, that he did not want to hear anything else about his job-related concerns until he paid "some union dues" clearly communicates a policy that the Union did not have to, and would not, represent nonunion members. Such has a tendency to restrain and coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act and violates Section 8(b)(1)(A) of the Act.

C. The Allegation that the Union Established and Maintained a Policy that Nonunion Members Would Not Be Equally Represented by the Union

Recently retired letter carrier, Kenneth Thiem (Thiem) testified Boatwright approached him in December 1991 regarding what he, Boatwright, could do about overtime he had lost during third quarter 1991. Thiem told Boatwright, USPS had until fourth quarter 1991 to make up any loss he might have suffered in the third quarter. Thiem told Boatwright if over-

time had not equalized by the end of fourth quarter 1991, then he (Boatwright) could file a grievance.¹⁰

Thiem testified that around January 8, Job Steward Fezio asked his assistance on how to prepare a grievance Boatwright wanted to file on overtime. Thiem said Fezio specifically wanted to know "how to prepare the grievance," "what to do," and "what documents she needed."

Thiem testified that subsequently (around January 13) Boatwright talked with him in the parking lot outside the facility. Thiem said that after Boatwright left, Job Steward Fezio told him "she wasn't going to be able to file the grievance." Thiem asked why, because he had earlier told her if she "couldn't get the grievance filed" or if she needed assistance to seek out the branch president and to "get an extension in the time limits to file—so that the grievance could be timely." According to Thiem, Job Steward Fezio said "the branch president [Price] had told her he did not have time to deal with Mark Boatwright, because he was not a Union member," that Boatwright was a "scab."¹¹

Job Steward Fezio did not specifically deny the comments Thiem attributed to her. Fezio did, however, state she had in the past represented nonmembers including Boatwright.

I credit Thiem's uncontradicted testimony as outlined above. In doing so, I am not unmindful that he had been defeated by current Branch President Price and that Price considered their relationship to have gone from "excellent" to "non-existent." I am nonetheless persuaded Thiem testified truthfully.

Fezio's telling Thiem she wasn't going to be able to file Boatwright's grievance because Branch President Price had told her he did not have time to deal with Boatwright because he was a scab and not a member of the Union establishes the Union communicated a policy to employees that nonunion members would not be equally represented by the Union, but does such demonstrate the Union *established* and *maintained* a policy that nonunion members would not be equally represented by the Union?

The Union argues very vigorously the evidence fails to establish the latter allegation and points to various instructions and actions (outlined below) by its local, as well as national, representatives that defeats any such conclusion.

First, the Union points out that Job Steward Fezio filed a grievance in 1991 on behalf of letter carrier Greg Scharstein, a nonunion member, related to a warning letter Scharstein had received charging him with failing to meet attendance requirements. Scharstein's grievance was resolved to the mutual satisfaction of the parties.

¹⁰Thiem had held various positions with the Union during his 22 plus years with USPS. Thiem served as shop steward for the local during 1986–1987; he served as vice president 1987–1988; and he served as branch president from 1988–1990. Thiem was defeated in his efforts to be reelected for an additional 2-year term as branch president by current Branch President Price. Thiem served as state director of education for the South Carolina Association of Letter Carriers 1986–1990. Thiem said his duties as director of education were (1) to train shop stewards to prepare and file grievances, and (2) to familiarize stewards with various applicable laws related to workers' compensation, Board issues, and related matters. Thiem said Job Steward Fezio attended two or three of the training sessions he conducted.

¹¹Thiem said he had on "many occasions" seen Branch President Price wear a button that used the international sign for stop (a circle with a 45-degree cross angle bar) imposed over the word "scab."

⁹Beaudrot acknowledged Shelton and Price were "shouting" at each other. Beaudrot said it was obvious Shelton did not agree with the Union's position regarding the terms of the same day leave policy.

Fezio testified that in October 1991, she filed a grievance at the request and on behalf of letter carriers Johnny Moore (Moore) and Boatwright. Fezio said USPS had called letter carrier Arthur Riley (Riley) for overtime when he was not on the overtime desired list whereas letter carriers John Hollis (Hollis), Moore, and Boatwright were. Fezio could not recall the outcome of the grievance but acknowledged, on cross-examination, that Hollis, Moore, and Riley are, and were at the time of the events set forth above, members of the Union. Fezio also acknowledged on cross-examination, the Union's position was that Riley and Moore should be paid for overtime. Fezio acknowledged Boatwright and Hollis were not mentioned in the Union's position for a remedy of the grievance but explained Moore would have been the letter carrier next in line for the overtime given to Riley.

Fezio testified Boatwright came to her in December 1991 with a two-pronged complaint. She said he first complained that letter carrier Riley had been allowed to work overtime notwithstanding the fact he was not on the overtime desired list. She said Boatwright's second complaint related to an incident Boatwright considered to be sexual discrimination. Fezio testified Boatwright dropped his sexual discrimination complaint after she convinced him he did not have sufficient comparisons to substantiate his allegations. Fezio said she pursued Boatwright's overtime complaint through the Uniform Management Pair System for resolving disputes.

Job Steward Lindler testified he filed a grievance in late 1991 for letter carrier Terry Gripper (Gripper), a nonmember, that related to an automobile accident Gripper had been involved in. He said a 2-year letter of warning issued to Gripper was reduced to a 1-year letter of warning.

Lindler testified he assisted Scharstein, a nonmember, with a grievance in early 1992 in which he succeeded in having a letter of warning reduced to an official discussion.

Branch President Price testified he assisted letter carrier Robert Turgeon, a nonmember, with a matter related to a letter of warning given Turgeon sometime in late January. It appears the letter of warning was by mutual agreement reduced to a "discussion."

Price testified he assisted letter carrier Gerald Caddy (Caddy), a nonmember, in a proposed removal action by USPS. Price testified Caddy was allowed to resign from USPS at the first step of the grievance procedure.

Price testified he assisted letter carrier Ward Lang (Lang), a nonmember, in Lang's efforts to be included in a backpay settlement that occurred "several years ago." Price wrote a letter asking USPS to review Lang's situation to see if he should have been included in the settlement. Price "believed" USPS wrote Lang including him in the settlement and awarded him "some" backpay.

The Union asserts it has also represented nonmembers in class action type grievances. The Union cites, as an example, a class action grievance filed regarding USPS' alleged failure in fourth quarter 1991 to distribute opportunities for overtime equitably. In the grievance, the Union asserts it is seeking relief for certain members and nonmembers including a \$91.50 overtime payment request for Boatwright.¹²

The Union contends it has always instructed its job stewards to represent members and nonmembers equally. National

Representative Rose and Branch President Price both testified they instruct job stewards to represent members and nonmembers equally.¹³ Job Steward Lindler testified he received training both from Rose and Price and that both told him to represent members and nonmembers the same.

Notwithstanding all the above, I am persuaded the Union established and maintained a policy that nonunion members would not be equally represented by the Union. The various violations outlined in this decision demonstrate the Union communicated to employees it was not going to represent nonmembers because they did not pay what the Union perceived was their fair share of the costs related thereto. It is clear that the Union, from time to time, represented nonmembers in class actions and in a few individual grievances but the overall thrust of the local's policy was that if letter carriers wanted equal representation by the Union, they needed to be members of the Union. In light of all the above, I conclude, as alleged in the complaint, that the Union established and maintained in violation of Section 8(b)(1)(A) of the Act a policy that nonunion members would not be equally represented by this local branch of the Union.

D. Boatwright's Attempts to File a Grievance on Overtime Equalization During the First Week in January 1992

It is alleged at paragraphs 8 and 9 of the complaint that, since on or about January 1, and continuing to date, the Union has failed to file a grievance concerning overtime pay for Boatwright because he was not a member of the Union.

Boatwright asked Job Steward Fezio during the first week in January to file a grievance for him on overtime equalization. Boatwright did so while the two of them were on break in the breakroom at the facility. Fezio told Boatwright she would finish their conversation outside the breakroom. After the two of them left the breakroom, Fezio told Boatwright she did not have to represent nonunion members and if he ever asked her a question like that again in front of members she would embarrass him. Fezio admittedly initially refused to file Boatwright's grievance but subsequently apologized and assured Boatwright she would file the grievance he requested.

Boatwright testified that after Fezio agreed to file his grievance, she told him, as they were standing at letter carrier Supervisor Blanding's desk, that she needed his help in obtaining information for filing and processing his grievance. Boatwright requested, in writing, from USPS the information Fezio needed.

Boatwright testified he asked Job Steward Fezio on January 7, "how the grievance was going?" According to Boatwright, Fezio said that "the grievance was going to be filed," that she was going to get it done on January 9. Boatwright said he thereafter spoke with Fezio on January 13 about the status of his grievance. Job Steward Fezio told Boatwright she was being pushed for time but assured him his grievance would be filed within the 14-day time limit.

Boatwright said he next spoke with Job Steward Fezio sometime between January 14 and 27, as the two were walking across the facility's parking lot. Boatwright said he asked

¹² At trial here, this particular grievance had reached step 3 of the grievance procedure.

¹³ National Representative Rose could not specifically recall conducting training for job stewards from the branch local involved here.

Fezio if she had filed his grievance. According to Boatwright, Fezio said she had not but assured him she had obtained an extension of time to file his grievance and told him he needed to speak to Job Steward Lindler about it.

Boatwright said that within a week he spoke again with Job Steward Fezio after work and this time she told him she had resigned her position as job steward. Boatwright said he mentioned to Fezio that Branch President Price and National Representative Rose had been at the facility and had not shaken hands with him and others. Fezio responded that Branch President Price and National Representative Rose had told her not to waste any time with nonunion members and/or represent them.

Boatwright, in the presence of letter carrier Beaudrot, spoke with Job Steward Lindler on January 27, at the facility, about the fact his overtime had not been straightened out. Lindler told Boatwright he got what he paid for, that if he paid dues, he would be represented.

Boatwright testified he thereafter attempted to file the grievance himself after speaking with former Branch President Thiem about the procedure he should follow. Boatwright's February 26 step 1 grievance reads as follows:

I'm filing a Step 1 under Article 8 (unequal distribution of over-time) for the 3rd & 4th quarter of 1991. The 4th quarter of 1991 over-time did not balance out the 3rd quarter of 1991 over-time.

Boatwright attached certain supporting documents (work/overtime tracking sheets for third and fourth quarters 1991) to his grievance. Boatwright also attached the overtime desired list for those same quarters of 1991.¹⁴

Boatwright's February 26 grievance was denied as untimely at step 1 of the grievance procedure by letter carrier Supervisor Blanding.

It is undisputed that Job Steward Fezio did not file the grievance Boatwright requested on equalization of overtime for the period in question. Although Job Steward Fezio represented to Boatwright she had done so, there is no proof she ever sought or obtained an extension of time in which to file Boatwright's grievance.

The Union argues Fezio's failure to file the overtime equitability grievance for Boatwright was not due to Boatwright's status as a nonmember. In support of its position, the Union points to the various examples cited earlier in this decision where it, as well as Fezio, filed grievances for nonmembers, both individually and in class action grievances. The Union points out that Fezio had in the past specifically assisted Boatwright and that relief is currently being sought for Boatwright as part of a class action grievance the Union is pursuing. The Union argues Fezio was an inexperienced untrained job steward that was "pushed for time" and resigned before she had an opportunity to file Boatwright's grievance. The Union argues Fezio *simply* "allowed the grievance deadline to slip by without ever having filed it." The Union urges it be considered nothing more than excusable negligence on Fezio's and the Union's part.

I reject the Union's position and do so for a number of reasons. Fezio first outright refused to file Boatwright's

grievance because "she did not have to represent non-union members." Fezio even told Boatwright that if he ever again even ask her about filing a grievance in front of fellow union members, she would "embarrass" him. Although Fezio did later apologize to Boatwright and say she would process his grievance, it appears she did so because she did not have written instructions from the Union on exactly how she should proceed when nonunion members asked that grievances be filed on their behalf. Fezio never filed Boatwright's grievance. Fezio never sought an extension of time in which to file Boatwright's grievance. Fezio acknowledged she did not like representing nonunion members because they did not pay dues. Fezio told Boatwright in late January that Branch President Price and National Representative Rose "told her not to waste any time with non-union members and/or represent them." Fezio told former Branch President Thiem on or about January 13, that "she was not going to be able to file the grievance" for Boatwright because "the Branch president had told her that he did not have time to deal with Mark Boatwright, because he was not a union member" that he was a scab. In her letter of resignation, Fezio pointed out she had "practically begged the scabs" to join and support the Union and noted that "many, if not most . . . grievances . . . originate with scabs." She also stated in her resignation letter that she had tried to "defend everyone," "scab or not" but that she had wanted "peer pressure" put on the "scabs" to "let them know you won't support their free ride." I am persuaded Fezio's failure to file Boatwright's grievance in early January was not as a result of being "pushed for time" but rather was a deliberate omission on her part to carry out the local branch's policy of not equally representing nonunion members and to bring pressure on and make an example of Boatwright as a nonunion member who thought he could have the branch local, and Fezio in particular, process a grievance on his behalf. It is clear this local branch of the Union, at times material here, treated union and nonunion members differently when it came to grievance filing and processing. For example, when Boatwright, on September 17, 1991, brought to Job Steward Lindler's attention that overtime was not being equalized in that he was getting more undertime than overtime, Lindler told Boatwright the Union took care of its own union members. Boatwright was not a member of the Union at that time. On January 27, when Boatwright brought to Job Steward Lindler's attention that the overtime situation had not been straightened out, Lindler told him, "you get what you pay for, if you pay your dues, you are represented." Another example of the different treatment afforded members versus nonunion members is that Branch President Price told letter carrier Shelton during the last week of February when they were discussing actions the Union had taken that "he [Price] didn't want [to] hear anything else that he [Shelton] had to say, scab, until you paid some Union dues."

In light of all the above, I conclude and find the Union, since on or about early January, has failed to file a grievance concerning the equalization of overtime for Boatwright which grievance Boatwright attempted to file pursuant to provisions of articles 8 and 15 of the applicable collective-bargaining agreement. I conclude the Union failed to file Boatwright's grievance because he was not a member of the Union. The Union's conduct violates Section 8(b)(1)(A) of the Act and I so find.

¹⁴ According to Boatwright, the sheets show "each individual carrier on a daily basis what he did" and were used by USPS to equalize overtime among the carriers.

With respect to any remedy, the Union argues that for Boatwright to be entitled to monetary recovery from the Union, counsel for the General Counsel must have established not only that the Union's failure to file the grievance violated the Act, but also that Boatwright's grievance would have been meritorious and would have entitled him to back-pay from USPS.

The Board has, as noted by counsel for the General Counsel in his closing argument at trial, set forth in *Rubber Workers Local 250 (Mack-Wayne)*, 290 NLRB 817 at 820-821 (1988), the burden counsel for the General Counsel as well as the Union must meet in cases of this type. In *Rubber Workers Local 250*, the Board summarized as follows:

To summarize, we hold that in an 8(b)(1)(A) case where the union has breached its duty of fair representation with regard to the processing of an employee's grievance, the General Counsel has an initial burden of establishing that the employee's grievance was not clearly frivolous in order to be entitled to a provisional make-whole remedy. If the General Counsel establishes that nexus between the union's unlawful conduct and the remedy, the burden of proof shifts to the union to establish that the grievance was not meritorious. We shall apply these rules to all cases where the union violates Section 8(b)(1)(A) by failing to properly process an employee's grievance and, to the extent any of our prior decisions may conflict with this decision, we overruled them to the extent of the inconsistency.

I am persuaded counsel for the General Counsel established that Boatwright's grievance was not "clearly frivolous." As testified to by former Branch President Thiem, grievances on equalization of overtime have been many and of major concern to letter carriers. Various arbitrators have ruled numerous ways on the contractual requirement that the opportunities for overtime be equalized and a large body of rulings has been established. Equalization of opportunities for overtime has, as Job Steward Fezio testified, generated overwhelming complaints from carriers to the extent that a tracking system is utilized to record overtime. According to Fezio, the letter carriers have complained often about whether USPS has properly maintained the overtime tracking system. National Representative Rose described the complexity of this issue as follows:

It would probably take me a complete day to explain the requirements to equitably distribute opportunities for overtime. Maybe just a brief history

The overtime equitably provisions were incorporated in the Collective Bargaining Agreement in 1978. Since that time they've been changed and altered and added to and probably have been interpreted by arbitrators thousands of times over. As a result of that, there are still on-going disputes with the current language in Article 8, Section 5 of the National Agreement that pertains to the equitable distribution for opportunities of overtime. Because of that, there is currently at the national level, that same dispute on how this should be appropriated. I consider each grievance on its merits, or each complaint on its merits when handling grievances concerning the equability, since there are so many variables and there are so many areas that have

no guarantees to those full-time letter carriers who have signed-up to work overtime.

Boatwright presented evidence that he was on the overtime desired list during the period in question and presented copies of USPS' overtime tracking sheets. Boatwright filed a grievance with the supporting evidence which USPS rejected as being timely.

I conclude and find that counsel for the General Counsel has presented sufficient evidence to establish that Boatwright's grievance was not clearly frivolous.¹⁵ I shall not require the Union to ascertain if USPS will now process Boatwright's grievance because USPS has already indicated it considers the grievance untimely. I shall simply recommend a make-whole remedy in favor of Boatwright and against the Union as the wrongdoer here.¹⁶

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the United States Postal Service pursuant to the Postal Reorganization Act, Section 1209.

2. National Association of Letter Carriers, Local Branch 4223 is a labor organization within the meaning of Section 2(5) of the Act.

3. By refusing to file and process Mark A. Boatwright's grievance of early January 1992, the Union breached its duty of fair representation in violation of Section 8(b)(1)(A) of the Act.

4. By threatening employees that union members would be given preferred treatment over nonunion members, by communicating a policy to employees that the Union did not have to represent nonunion members, and by establishing and maintaining a policy that nonunion members would not be equally represented by the Union, the Union has restrained and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act thereby violating Section 8(b)(1)(A) of the Act.

5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Union violated the Act, I shall recommend that it be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, I recommend that the Union shall be responsible for making Mark A. Boatwright whole for any loss of earnings he may have suffered as a result of its failure to process his early January 1992 grievance. Backpay shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest, as computed in *New Ho-*

¹⁵ I note National Representative Rose acknowledged that each grievance of this nature had to be considered on its own merit because of the "many variables" in these type complaints.

¹⁶ Inasmuch as the Union failed prior to the close of the trial to have made "an unambiguous election" to litigate the merits of Boatwright's grievance at the unfair labor practice hearing or at the compliance stage, it has forfeited that right. *Rubber Workers Local 250 (Mack-Wayne)*, 290 NLRB 817 at 821 (1988).

Horizons for the Retarded, 283 NLRB 1173 (1987).¹⁷ Finally, I recommend the Union be ordered to post an appropriate notice to members, copies of which are attached hereto as "Appendix" for a period of 60 days in order that members and employees may be apprised of their rights under the Act and the Union's obligation to remedy its unfair labor practices.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁸

ORDER

The Respondent, National Association of Letter Carriers, Local Branch 233, Columbia, South Carolina, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to file and/or process grievances because the grievants are not members of the Union.

(b) Threatening employees that union members would be given preferred treatment over nonunion members.

(c) Communicating a policy to employees that the Union did not have to represent nonunion members.

(d) Establishing and maintaining a policy that nonunion members would not be equally represented by the Union.

¹⁷Under *New Horizons*, interest is computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendments to 26 U.S.C. § 6621.

¹⁸If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(e) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Make Mark A. Boatwright whole for any loss of earnings he may have suffered as a result of our failure to process his early January 1992 grievance.

(b) Post at its offices copies of the attached notice marked "Appendix."¹⁹ Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Mail a copy of the notice to Mark A. Boatwright.

(d) Forward to the Regional Director for Region 11 signed copies of the notice sufficient in number for United States Postal Service, if willing, to post at its Dutch Fork Branch facility in Columbia, South Carolina.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹⁹If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."